

1967  
K958

LEGAL LIABILITY OF PHYSICAL EDUCATION  
TEACHERS IN IOWA

---

A Field Report  
Presented to  
the Graduate Division  
Drake University

---

In Partial Fulfillment  
of the Requirements for the Degree  
Master of Science in Education

---

by  
Beverly Jean Kukowski  
June 1967

LEGAL LIABILITY OF PHYSICAL EDUCATION  
TEACHERS IN IOWA

by

Beverly J. Kukowski

Approved by Committee:

Wesley C. Mendenhall  
Chairman

Catherine Snell  
Mrs. E. S. Snell

W. J. Hall  
Dean of the Graduate Division

162 vj

## TABLE OF CONTENTS

CHAPTER	PAGE
I. INTRODUCTION . . . . .	1
The Problem . . . . .	2
Statement of the problem . . . . .	2
Importance of the study . . . . .	3
Definition of Terms . . . . .	4
Action . . . . .	4
Assumption of risk . . . . .	4
Common law . . . . .	5
Contributory negligence . . . . .	5
Damages . . . . .	5
Defendant . . . . .	5
Governmental function . . . . .	5
Guest statute . . . . .	6
Liability . . . . .	6
Malfeasance . . . . .	7
Misfeasance . . . . .	7
Negligence . . . . .	7
Nonfeasance . . . . .	7
Plaintiff . . . . .	7
Proprietary function . . . . .	8
Proximate cause . . . . .	8

CHAPTER	PAGE
Quasi-public corporation . . . . .	8
Recklessness . . . . .	8
Respondeat superior . . . . .	9
Save harmless statute . . . . .	9
Tort . . . . .	9
The Procedure . . . . .	9
Negligence as a Tort . . . . .	10
Immunity of School Districts From Tort	
Liability . . . . .	22
Liability of School Districts for Their	
Torts . . . . .	25
Trends in Liability Laws in Our Fifty States . .	28
II. LIABILITY IN THE SELECTED AREA OF PHYSICAL	
EDUCATION . . . . .	31
Accidents in the Physical Education Area . . . .	31
Equipment . . . . .	33
Curriculum . . . . .	36
Supervision . . . . .	39
Supervision by student teachers . . . . .	43
First aid . . . . .	44
Transportation . . . . .	48
Insurance . . . . .	52
Standards for a Reasonable, Prudent and Careful	
Physical Educator . . . . .	53



CHAPTER	PAGE
Trends in Liability in the Area of Physical Education . . . . .	54
III. SUMMARY AND CONCLUSIONS . . . . .	59
BIBLIOGRAPHY . . . . .	62
APPENDIX . . . . .	66

## CHAPTER I

### INTRODUCTION

As cultures have changed and become more complex, there have been encountered countless conflicts between personal responsibilities and the responsibilities of the society in which people live. These conflicts have resulted in various formal procedures and rules that have attempted to govern behavior in order that society may live with an individual and an individual may live within a society.

Under the American legal system all persons have the right to be free from intentional or careless bodily injury. A principle of law states that every individual is personally liable in damages for his acts of negligence.<sup>1</sup>

School accidents are, unfortunately, likely to occur despite the utmost care taken by authorities to protect pupils and accidents do take place anywhere on the school premises.

Physical education teachers should realize that they cannot be too cautious in preventing injuries to pupils, as they might have to defend themselves against negligence charges if accidents occur. Physical education teachers need an understanding of the legal principles on which negligence

---

<sup>1</sup>38 Am. Jr., Negligence Sec. 4.

rests so that they can justify their behavior and defend themselves.

Iowa law requires the attendance of children at school.<sup>1</sup> If a school child is injured, who is responsible under the law? Is the school district or the teacher, assuming there has been negligence on the part of one or both parties, held liable for an injury? Is the two hundred year old doctrine of governmental immunity a shield for either involved party?

A complex and changing culture dictates the necessity for knowledge of the common law and statutory law in Iowa and their application to the field of physical education. Awareness of the nature of legal liability in the area of negligence is vital to the physical educator's defense.

## I. THE PROBLEM

Statement of the problem. Professional duties of physical educators and legal sanctions have created circumstances requiring the awareness of the responsibilities of physical education teachers in Iowa to their students. It was the purpose of this study to alert those individuals who are intrusted with the safety of students participating in physical education programs, to their legal duties and to aid in evaluating teaching practices and curriculum in light

---

<sup>1</sup>Iowa Code, Sec. 299.1, 1953.

of the immaturity of the student and the importance of the teacher's trust.

Importance of the study. The consequences of legal liability arising out of injury to a student may seriously involve and affect not only the physical education teacher in Iowa, but also the physical education curriculum. Injuries resulting from physical education programs have been a source of a great number of suits for damages against physical education teachers.<sup>1</sup>

A judgment for money damages against a physical education teacher is a real and apparent problem. It behooves each concerned person to be conscious not only of his exposure to financial loss, but also of whatever moral obligations he may feel. Iowa school districts presently enjoy the benefit of governmental immunity from liability for negligence.<sup>2</sup> Philosophical differences exist concerning the wisdom of school district immunity as a facet of governmental immunity and each exposure to scrutiny by a court creates the possibility of abolition or erosion of the present protection of immunity for negligence. Curriculum content and pattern may suffer as the result of a decision by a court or

---

<sup>1</sup>National Education Association Research Division, Who is Liable for Pupil Injuries (Washington, D.C.: National Commission on Safety Education, 1963), p. 48.

<sup>2</sup>Howard C. Leibee, Tort Liability for Injuries to Pupils (Michigan: Campus Publishers, 1965), p. 36.

legislative action prompted by an incident of injury to a student. The law's emphasis generally is on liability for wrongdoing. Recognition of responsibility to avoid the consequences of liability requires constant vigilance and continuing appraisal of teaching situations by the physical educator and school authorities.

## II. DEFINITION OF TERMS

Action. Action is the ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right; the redress or prevention of a wrong; a legal proceeding by a party complainant against a party defendant to obtain the judgment of the court in relation to some remedy claimed to given by law to the party complaining.<sup>1</sup>

Assumption of risk. Assumption of risk is the fact of comprehension that a peril is to be encountered and a willingness to encounter it; a positive exercise of a volition in the form of an assent to the risk.<sup>2</sup> This doctrine must not be confused with contributory negligence. The latter is based on carelessness while the former is intelligent choice.

---

<sup>1</sup>Henry C. Black, Black's Dictionary (St. Paul: West Publishing Company, 1933), pp. 41-42.

<sup>2</sup>45 Corpus Juris, 841 Sec. 255.

Common law. Common law is the body of those principles and rules of action which arose out of custom and usage and judgments of courts recognizing such customs and usages.<sup>1</sup> It is the body of law created by prior decisions. The common law is distinguished from statutory law, or laws created by legislature.

Contributory negligence. The want or lack of ordinary care by the injured person, concurring with the negligence of another, and thus contributing to the injury is contributory negligence.<sup>2</sup> Contributory fault may bar an individual from a recovery if his misconduct combines and concurs with negligence in causing the injury.

Damages. Damages is the pecuniary compensation recovered in the courts for the damage suffered by a person through another's wrongful act.<sup>3</sup>

Defendant. The defendant is the party against whom a recovery is sought in an action or suit.<sup>4</sup>

Governmental functions. Governmental functions are purposes pertaining to the administration of general laws made to enforce the general policy of the state, such as the

---

<sup>1</sup>Black, op. cit., p. 368.

<sup>2</sup>Restatement of the Law of Torts Sec. 486 (1965).

<sup>3</sup>Black, op. cit., p. 499.

<sup>4</sup>Ibid., p. 541.

establishment of a school district, a police or fire department, or for the removal of garbage.<sup>1</sup> Acts done in execution of police powers are performance of services for the benefit of the public and therefore governmental.<sup>2</sup> "Governmental function" is to be distinguished from a "proprietary function". The latter may be an act performed by a governmental subdivision, but by reason of the nature of the act or service would be considered a non-governmental function.<sup>3</sup>

Guest statute. A guest statute is a legislative enactment which limits the right of a "guest" to hold liable the driver of a vehicle in which he is conveyed gratuitously. The law of the jurisdiction prescribes the degree of negligence which is excused. If a driver is grossly negligent or reckless he may then be responsible for an injury caused to a guest.<sup>4</sup>

Liability. Liability is legal responsibility; the state of being bound in law and justice to do something which may be enforced by a court.<sup>5</sup>

---

<sup>1</sup>Rowley v. Cedar Rapids, 203 Iowa 1245, 212 N.W. 158 (1927).

<sup>2</sup>Mardis v. City of Des Moines, 240 Iowa 105, 113, 34 N.W. 2d 620 (1949).

<sup>3</sup>Rowley v. cedar Rapids, 203 Iowa 1245, 212 N.W. 158 (1927)

<sup>4</sup>Iowa Code, Sec. 321.494 (1965)

<sup>5</sup>Black, op. cit., p. 1102.

Malfeasance. Malfeasance is the wrongful or unjust doing of some act which the doer has no right to perform. Evil doing, or ill conduct.<sup>1</sup>

Misfeasance. Misfeasance is the failure to do a lawful act in a proper manner; omitting to do it as it should be done.<sup>2</sup>

Negligence. Negligence is the failure to exercise the degree of care demanded by the circumstances; or as the want of that care which the law prescribes under the particular circumstances existing at the time of the act or omission which is involved.<sup>3</sup>

Nonfeasance. Nonfeasance is the neglect or failure of a person to do some act which he ought to do; the omission or failure to perform a required duty, or total neglect of duty.<sup>4</sup>

Plaintiff. Plaintiff is one who brings an action; the party who complains or sues in a personal action.<sup>5</sup>

---

<sup>1</sup> Ibid., p. 1146.

<sup>2</sup> Ibid., p. 1193.

<sup>3</sup> 38 Am. Jur., Negligence Sec. 2.

<sup>4</sup> Black, op. cit., p. 1255.

<sup>5</sup> Ibid., p. 1364.



Proprietary function. Proprietary function is an act which could as well be performed by private persons or corporation rather than a governmental subdivision. A municipal electrical plant selling electricity is an example of a proprietary function.<sup>1</sup>

Proximate cause. In a legal sense, proximate cause is the natural and continuous sequence of events, unbroken by an intervening cause, which produces injury, and without which the result would not have occurred. The legal term which limits and describes causes which are justified in holding one creating a chain of events responsible for the results.<sup>2</sup>

Quasi-public corporation. Quasi-public corporations are public bodies and subdivisions established by statute to perform specifically delegated functions of government.<sup>3</sup> The category of quasi-corporations includes school districts.<sup>4</sup>

Recklessness. Recklessness is conduct more than negligence, manifesting a heedless disregard for or

---

<sup>1</sup>Miller v. Town of Milford, 224 Iowa 753, 276 N.W. 826 (1938).

<sup>2</sup>Chenoweth v. Flynn, 251 Iowa 11, 99 N.W. 2d, 310 (1959).

<sup>3</sup>Larson v. Independent School District, 223 Iowa 691, 272 N.W. 632 (1937).

<sup>4</sup>Ness v. Independent School District, 230 Iowa 771, 298 N.W. 85 (1941).

indifference to the consequences or the rights or safety of others.<sup>1</sup>

Respondeat superior. "Let the master answer."

Respondeat superior is the legal doctrine of holding the master or employer liable for the wrongful act of his servant or employee.<sup>2</sup>

Save harmless statute. A save harmless statute is a law enacted requiring school districts to indemnify teachers or pay judgments rendered against them arising out of negligence involving school duties.<sup>3</sup>

Tort. The term tort is used to denote a wrong or wrongful act for which an action will lie; a legal wrong committed upon the person or property independent of contract; an unlawful violation of another's legal rights.<sup>4</sup>

### III. THE PROCEDURE

In the preparation of this study, textbooks pertaining to school law were read and examined. The information obtained from these books was recorded according to outlined headings

---

<sup>1</sup>Neyens v. Gehl, 235 Iowa 115, 15 N.W. 2d 888 (1944).

<sup>2</sup>Black, op. cit., p. 1546.

<sup>3</sup>National Education Association Research Division, op. cit., p. 23.

<sup>4</sup>Black, op. cit., p. 1738.

in the areas of school law and physical education in Iowa.

Legal materials were obtained from The National Reporter System, West's Key Number Digests, American Jurisprudence, Black's Law Dictionary, and The Iowa Code, and were analyzed and selected for their applicatory usefulness to each selected area of the problem. Professional physical education and education pamphlets, periodicals, and law reviews were also consulted as possible source materials. The information in these sources was selected for its relevancy to the subject of legal liability in physical education in Iowa.

#### IV. NEGLIGENCE AS A TORT

Negligence in the popular sense is the lack of due diligence or care.<sup>1</sup> Actionable negligence, or negligence in the legal sense, has been defined as a violation of the duty to use due care. However, one not infrequently encounters the statement that no comprehensive definition is possible.<sup>2</sup> More particularly, actionable negligence is the failure of one owing a duty to another to do what a reasonable and prudent person would ordinarily have done under the circumstances, or doing what such a person would

---

<sup>1</sup>Thorndike, Barnhart, Comprehensive Desk Dictionary (New York: Doubleday and Company, 1962), p. 525.

<sup>2</sup>McDonald v. Chicago & N.W. R. Company, 26 Iowa 124, 96 Am. Dec. 114 (1868).

not have done, which omission or commission is the proximate cause of injury to the other.<sup>1</sup> The elements of duty, breach, proximate cause, and injury are essentials of actionable negligence. In the absence of any one of them, the plaintiff has no cause or action for negligence which would permit him to prevail.

The basic problem in tort law is to ascertain what kinds of conduct the law has come to regard as the basis for legal liability, and then the harms for which one is liable. To be determined is what conduct is tortious and to discover for what consequences of a harmful nature a person is responsible. We may regard the law as imposing a duty upon one to avoid or refrain from conduct which subjects others to risks of certain consequences. This duty concept gives rise to two forms of conduct which may be characterized as negligence:

1. Acts which a prudent person should realize involve unreasonable risk of injury to others.
2. Failure to do an act which is necessary to protect another and which one is under a legal duty to do.<sup>2</sup>

The creation of an unreasonable risk to others, that is active negligence or misfeasance, may occur in a number of ways. An act may be negligent because it is not properly

---

<sup>1</sup>Crowley v. Chicago B&Q R. Co., 204 Iowa 1385, 213 N.W. 403 (1928).

<sup>2</sup>38 Am. Jur. Negligence Sects. 12, 13, 14, 18, 19.

done, or it may be negligent, although done with due care, because of the circumstances under which it is done. Conduct may be negligent because one is indulging in acts which involve unreasonable risk of direct harm, or because one creates a situation unreasonably dangerous to others because of the likelihood of the action of third persons or of inanimate objects. Entrustment of dangerous devices to incompetent persons is another form of negligent conduct.<sup>1</sup> Failure to make adequate preparation to avoid harm to others before engaging in certain conduct and failure to employ due care to give adequate warning may all constitute conduct creating a risk of harm.<sup>2</sup>

Additionally, an affirmative duty may be imposed upon persons who are in no manner creating risks by their activities. This duty is not general but is confined to persons occupying relationships to others, such as a teacher-pupil situation. Non-feasance is the legal term describing the failure to take positive action to protect others from harm not created by a wrongful act of the defendant. There is, in general, no duty to aid others. There is a duty to take positive action to avoid unreasonable risks to others not created by the actor if the person charged with such duty is enjoying benefits from the relationship. Relationships

---

<sup>1</sup>McEldon v. Drew, 138 Iowa 390, 116 N.W. 147 (1908).

<sup>2</sup>38 Am. Jur., Negligence Sec. 14.

giving rise to the duty to take positive precautions may include a contract and/or control over the conduct of a person.<sup>1</sup>

Fundamentally, the duty of a person to use care and his liability for negligence depends upon the tendency of his acts under the circumstances as they are known or should be known to him. On the other hand, an injury is not actionable if it was not foreseen, or could not have been foreseen or reasonably anticipated.<sup>2</sup> The duty to use due care is not limited to a situation where the balance of probabilities is on the side of danger. If there is some probability of harm sufficiently serious that ordinary men would take precautions to avoid it, then failure to do so is negligence. To render one liable for negligence, it is sufficient that he should have foreseen that the negligence would probably result in injury of some kind to some person, and he need not have foreseen the particular consequences of injury that resulted.<sup>3</sup>

A legal creature, the reasonably prudent person placed in a similar set of circumstances, is the measure used by the jury or judge to determine if the defendant's actions constituted a breach of duty.

---

<sup>1</sup>38 Am. Jur., Negligence Sec. 19, 20, 21.

<sup>2</sup>Thyssen v. Davenport Ice and Cold Storage Company, 134 Iowa 749, 112 N.W. 177 (1907).

<sup>3</sup>Doyle v. Chicago St. P. K.C.R. Co., 77 Iowa 607, 42 N.W. 555 (1889).

The standard of conduct whether left to the jury or laid down by the court, is an external standard, and take no account of the personal equation of the man concerned. The notion that it should be co-extensive with the judgment of each individual was exploded, if it needed exploding by Chief Justice Tindal in Vaughan v. Menlove.<sup>1</sup>

The defendant is held to an external standard of the reasonable man although he may be in fact incapable of such conduct. No allowance is made for varieties of temperament, intellect, and education. One is ignorant in any field at his peril. A special field of skill, however, may modify the standard of the ordinary reasonable person. For example, a physical education instructor may be held to possess special knowledge and skill and the care he must exercise is that of the ordinary, reasonable, physical education instructor.<sup>2</sup>

The individual to whom a duty may be owed may affect the standard of care to be exercised by the defendant. Persons who are known to be deficient in mind or body, or who are young and inexperienced, are entitled to a degree of care proportioned to their incapacity to protect themselves.<sup>3</sup>

It can be seen that the ordinary, reasonable, and prudent man, adopted as a standard by the law, must in

---

<sup>1</sup> 196 U. S. 589, 48 L. ed. 610.

<sup>2</sup> 38 Am. Jur., Negligence Sec. 31.

<sup>3</sup> Doggett v. Chicago B. & Q.R. Co., 134 Iowa 690, 112 N. W. 171 (1907).

reality be an ideal man in the sense that his conduct is in every case the gauge of due care under the circumstances.

The question whether a defendant is guilty of actionable negligence is ordinarily one of fact for the jury, it being left to them to determine under proper instructions from the court whether or not the defendant acted with reasonable care under the circumstances of the case. Under proper instruction, the jury in their deliberations would have established as a part of the finding of negligence that the defendant owed a duty to the plaintiff and breached that duty. The court may be bound to make a finding for the defendant, if the evidence is so clear that reasonable minds could not differ and there is insufficient evidence of negligence conduct on the part of the defendant.<sup>1</sup>

Proximate cause or legal cause is the third element necessary to establish negligence. Legal causation must be found to relate the duty and the breach of the duty to the injury caused. Proximate cause has been defined by the Iowa Supreme Court as, "any cause which in natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred."<sup>2</sup>

It is not necessary to a defendant's liability that

---

<sup>1</sup>Johnston v. Johnson, 225 Iowa 77, 279 N. W. 139 (1938).

<sup>2</sup>Chenoweth v. Flynn, 251 Iowa 11, 16, 99 N. W. 2d 310 (1959).



the consequences of his negligence should have been foreseen, and it is sufficient if the injuries are the natural, though not necessary or inevitable, result of the wrong.<sup>1</sup> The purpose of testing proximate cause according to the natural and probable result is to apply the common experience of mankind to the situation and to preclude liability for a consequence of negligence which does not follow naturally and reasonably from the negligence. An injury may be deemed the natural and probable result of a negligent act if after the event, and in retrospect to the act, the injury seems to be the reasonable rather than the extraordinary consequence of the wrong.

Assuming negligence, additional causes may affect one's responsibility for an injury. The mere concurrence of one's negligence with the proximate and efficient cause of an injury will not impose liability upon him, but the fact that some other cause concurred with the negligence of the defendant in producing an injury does not relieve the defendant from liability unless he can show that such other cause would have produced the injury independently of his negligence.<sup>2</sup> It must be remembered that the negligence of one person is in no sense justified by the concurring negligence of another.

---

<sup>1</sup>Cowman v. Hansen, 250 Iowa 358, 92 N.W. 2d 682 (1958).

<sup>2</sup>Walrod v. Webster County, 110 Iowa 347, 81 N.W. 598 (1900).

The injection of a new act of negligence by a third person may relieve the original wrongdoer of responsibility for his actions. Intervention of a new, independent, and efficient cause severs whatever connection there may be between the original act, which is now remote, and the injury. The new act must meet the requirements of proximate cause to provide the legal insulation necessary to relieve the original act of negligence.<sup>1</sup>

Causation is not a completely defined set of legal principles but, rather, equities, public policy, and precedent as established by the courts. It is the limitation the courts have put upon the responsibility of a person for his conduct.<sup>2</sup>

The fourth element necessary to establish negligence and the right to recover damages is injury or damage. Without proof of some damage to the interests of the plaintiff a negligence action is not complete. Physical injury to the plaintiff's person or tangible property provide a basis for a jury to establish the recovery of money damages.<sup>3</sup>

Any discussion of negligence requires recognition of the principal defenses to a negligence action. Defenses

---

<sup>1</sup>Gray v. Des Moines, 221 Iowa 596, 265 N. W. 612 (1936).

<sup>2</sup>Chenoweth v. Flynn, 251 Iowa 11, 16, 99 N.W. 2d 310 (1959).

<sup>3</sup>38 Am. Jur., Negligence Sec. 11.

include a denial of negligence, contributory negligence, assumption of risk, unavoidable accident, and an act of God.

A person may have acted or failed to act without negligence and as a reasonably prudent person should have acted under the circumstances. The plaintiff has the legal burden to prove the defendant's negligence,<sup>1</sup> and the defense may rely on a mere denial of negligence or the defendant may assert positive evidence that due care was exercised to prevent or protect the plaintiff from harm.

A defense of contributory negligence may be raised by the defendant to bar plaintiff's recovery. Reasonable self-protection is expected of all sane persons and the defendant may seek to avoid a finding of liability by proving that the plaintiff contributed to his injury by his own negligence. In Iowa, the finding of contributory negligence on the part of the plaintiff is a complete bar to his right of recovery.<sup>2</sup> A recent statutory change of the Iowa statutes now places the burden of pleading and proving plaintiff's contributory negligence on the defendant.<sup>3</sup> If the defendant relies upon the negligence of the plaintiff as a complete defense or bar to the plaintiff's recovery, the defendant shall have the

---

<sup>1</sup>Heacock v. Baule, 216 Iowa 311, 249 N.W. 437 (1933).

<sup>2</sup>Banning v. Chicago R.I. & P. Ry., 89 Iowa 74, 56 N.W. 277 (1893).

<sup>3</sup>Iowa Code, Sec. 619.17 (1965).

burden of pleading and proving negligence of the plaintiff, and that it was a proximate cause of the injury or damage.<sup>1</sup>

It should be remembered that minors are not held to the same degree of care for self-protection as are adults. The standard required of children is that degree of care which the great mass of children of like age, intelligence, and experience ordinarily would exercise under the same circumstances. A child may be too young to be charged with contributory negligence regardless of his age if he is of tender years. A four year old child, a passenger in colliding cars, was conclusively presumed incapable of being negligent by reason of his age and circumstances.<sup>2</sup> An interpretation of Iowa law was rendered by the federal court in Hodges v. U.S.<sup>3</sup>, in which the court determined that a child under the age of seven was incapable of negligence.

Between the ages of seven and fourteen a child is presumed incapable of exercising judgment so as to charge him with contributory negligence, but the presumption is rebuttable by showing evidence of his capacity.<sup>4</sup> As the presumption is stated, ordinarily at fourteen years of age,

---

<sup>1</sup>Schultz v. Gosselink, ---, Iowa, ---, 148 N.W. 2d 434 (1967).

<sup>2</sup>Law v. Hemmingsen, 249 Iowa 820, 89 N.W.2d 386 (1958).

<sup>3</sup>Hodges v. U.S., 98 F. Suppl. 281 (S.D. Iowa, 1948).

<sup>4</sup>McEldon v. Drew, 138 Iowa 390, 116 N.W. 147 (1908).

an infant is presumed to have sufficient capacity and understanding to be sensible of danger and having the power to avoid it.<sup>1</sup>

Assumption of risk is a defense which may be raised by the defendant to exonerate himself of liability for negligence. Assumption of risk is a legal doctrine which presupposes that despite a relation or situation known to be dangerous, a person appreciating the danger involved, voluntarily chooses to enter upon and remain within the area of danger.<sup>2</sup> Contributory negligence and assumption of risk are distinguishable. In Edwards v. Kirk, the Iowa Supreme Court said, "Assumption of risk involves more or less deliberation, whereas contributory negligence implies lack of care, and hence absence of deliberate choice."<sup>3</sup>

Again to be considered is the age of the plaintiff. A child is not expected to have the same powers of determining the reasonableness of a particular situation and the law may deny his capability of accepting a given risk.

Unavoidable accident is an event which has occurred without fault, carelessness, or want of proper circumspection on the part of the defendant. The defense of unavoidable

---

<sup>1</sup>Doggett v. Chicago B. & Q. R. Co., 195 Iowa 423, 192 N.W. 255.

<sup>2</sup>Marean v. Peterson, ---, Iowa ---, 144 N.W. 2d 906 (1907).

<sup>3</sup>Edwards v. Kirk, 227 Iowa 684, 288 N.W. 875 (1939).

accident is a permitted one in Iowa,<sup>1</sup> if defendant can prove that he did not contribute to the accident the jury could reasonably conclude that the misadventure was a mere accident or an unavoidable accident.<sup>2</sup>

An act of God may be raised as a defense provided the defendant can show that the loss was created by an inevitable accident in which the defendant played no part. On the other hand, when an act of God combines or concurs with the negligence of the defendant to produce an injury, the defendant is liable if the injury would not have resulted but for his own negligent conduct or omission.<sup>3</sup>

To avoid any possible confusion with the rule of immunity as it applies to quasi-corporations, such as school districts in Iowa, it should be specifically noted that immunity for negligence may not apply to employees of the quasi-corporation. In Montanick v. McMillin, the Iowa Supreme Court stated:

Liability of Fred McMillin (county employee) is not predicated upon any relationship growing out of his employment, but is based upon the fundamental and underlying law of torts, that he who does injury to the person or property of another is civilly liable in damages for the injury inflicted. The

---

<sup>1</sup>Schevers v. American R. Exp. Co., 195 Iowa 423, 192 N.W. 255 (1923).

<sup>2</sup>Wagaman v. Ryan, Iowa, 142 N.W.2d 413 (1966).

<sup>3</sup>38 Am. Jur., Negligence Sec. 7.

exemption of governmental bodies and their officers from liability under the doctrine of respondeat superior, is a limitation or exception to the rule of respondeat superior, and in no way affects the fundamental principle of torts that one who wrongfully inflicts injury upon another is liable to the injured person for damages.<sup>1</sup>

Cited by the court was Goold v. Saunders, in which the court said:

A public official may be guilty of negligence in the performance of official duties, for which his official character gives him no immunity. Public service should not be a shield to protect a public servant from the consequences of his personal misconduct.<sup>2</sup>

A distinction was made in Montanick v. McMillin between acts of nonfeasance and misfeasance. An act of misfeasance was defined as a positive wrong, for which every employee, whether employed by a private person or a municipal corporation, is held to a duty not to injure another by a negligent act of commission. If only nonfeasance is present, no liability exists regardless of to whom the duty is owed.<sup>3</sup>

#### V. IMMUNITY OF SCHOOL DISTRICTS FROM TORT LIABILITY

The common law doctrine of "sovereign immunity" is usually referred to as "governmental immunity" in the United States and is well recognized as an integral theory of the

---

<sup>1</sup>Montanick v. McMillin, 225 Iowa 442, 208 N.W. 608 (1938).

<sup>2</sup>Goold v. Saunders, 196 Iowa 380, 194 N.W. 227 (1923).

<sup>3</sup>Montanick v. McMillin, 225 Iowa 442, 208 N.W. 608 (1938).

law. In Hoover v. Iowa State Highway Commission, the Iowa Supreme Court recognized the extension of the doctrine of sovereign immunity into the common law of Iowa stating:

Our English ancestors developed the theory of sovereign immunity, and they transmitted the doctrine down through the centuries to us. Here, the principle, when applied, must be invoked according to the state and Federal Constitutions...as a substitution for an absolute sovereignty and the divine right of the king.<sup>1</sup>

The Iowa Rules of Civil Procedure provide that the state may sue in the same way as an individual and that it may be sued as provided by any statutes in force at the time.<sup>2</sup> The permission to be sued, however, is limited and generally a quasi-corporation, such as a school district, is immune from liability for damages.<sup>3</sup> Care must be taken at this point to distinguish between a governmental or ministerial function and a proprietary function. The category of quasi-corporations includes counties<sup>4</sup> and school districts.<sup>5</sup> Although a county is more easily recognized as an involuntary subdivision of the state, a school district is, without doubt, a quasi-corporation. The only case supporting a denial of absolute

---

<sup>1</sup>Hoover v. Iowa State Highway Commission, 207 Iowa 56, 58, 222 N.W. 438, 439 (1928).

<sup>2</sup>Iowa Code, R.C.P. 9 (1965).

<sup>3</sup>Bover v. Iowa High School Athletic Association and Independent School District of Mason City, Iowa, 265 Iowa 337, 127 N.W.2d 606 (1964).

<sup>4</sup>Cunningham v. Adair County, 190 Iowa 913, 181 N.W.2d (1921).

<sup>5</sup>Ness v. Independent School District, 230 Iowa 771, 298 N.W. 85 (1941).



immunity to quasi-corporations is Wittmer v. Letts,<sup>1</sup> which held that a county would be liable for the negligent operation of a county hospital. The Supreme Court held that the operation of a county hospital is a proprietary function and that quasi-corporations are liable for the negligence of their employees in such a case. Whether the Supreme Court will expand its scope cannot be predicted at this time.

The adherence of the courts to the doctrine of immunity is largely a matter of public policy on the theory that school districts are corporations with limited powers and act merely on behalf of the state in discharging the duty of educating the children of school age in public schools. The Iowa Supreme Court simply stated that immunity from liability for torts was largely a matter of public policy, and noting a line of cases, held, the legislature, not the courts, ordinarily determines the public policy of the state.<sup>2</sup>

Other reasons commonly given for the rule of non-liability of school districts is that they have no means to pay damages for tort claims, and that they are not given power to raise money therefor. Further, that all funds placed under their control are appropriated by law for strictly school purposes, and cannot be diverted for any other purpose.<sup>3</sup>

---

<sup>1</sup> 248 Iowa 648, 80 N.W. 2d 561 (1957).

<sup>2</sup> Boyer v. Iowa High School Athletic Association and Independent School District of Mason City, Iowa, 256 Iowa 337, 127 N.W.2d 606 (1964).

<sup>3</sup> 86 A.L.R.2d Sec. 9.

The common law governmental immunity doctrine has been challenged in the courts time and again, but the doctrine prevails with strict application in the majority of states today.<sup>1</sup>

## VI. LIABILITY OF SCHOOL DISTRICTS FOR THEIR TORTS

Governmental immunity of school districts has been abolished in the following states: Alaska, Arizona, California, Hawaii, Illinois, Minnesota, (in 1963),<sup>2</sup> New York, Washington, and Wisconsin.<sup>3</sup> In these states, actions may be brought against a school district for negligence in the performance of a governmental or a proprietary function. School districts in these states are liable for the negligent acts of employees committed in the scope of their employment. In other words, the doctrine of respondeat superior is in effect. As a matter of legal practice and assuming a finding of negligence, both the school district and the employee would be jointly and severally liable. Generally, satisfaction would be obtained from the school district because it would have the funds with which to pay the judgment.

---

<sup>1</sup> 86 A.L.R. 2d Sec. 3.

<sup>2</sup> Spanel v. Mounds View School Community Unit District, No. 302, 163 N. E. 2d 89 (1959).

<sup>3</sup> 86 A.L.R. 2d Secs. 20, 21, 26, 29.

Abregation of the rule of immunity has been accomplished either by statute or by judicial decision. Alaska, California, Hawaii, New York, and Washington provided for the right of persons to sue school districts by statutory change.<sup>1</sup> Arizona,<sup>2</sup> Illinois,<sup>3</sup> Minnesota,<sup>4</sup> and Wisconsin<sup>5</sup> abolished the immunity rule by judicial decision.

Many states, including those still retaining the rule of immunity, permit school districts, among other forms of municipal corporations, to purchase insurance for the purpose of paying judgments against the school district or an employee. Generally, if insurance is purchased, the district may be liable for negligence in both governmental and proprietary functions only to the extent of the insurance policy. Statutory permission has been granted to state agencies in Iowa to purchase liability insurance to protect against individual or corporate liability. The permissive purchase of insurance does not eliminate the

---

<sup>1</sup> 86 A.L.R. 2d Sec. 20, 21, 26, 29.

<sup>2</sup> Sawaya v. Tucson High School District, 78 Ariz. 389,

<sup>3</sup> Molitor v. Kaneland Community Unit District No. 302, 18 Ill. 2d 11, 163 N.E. 2d 89 (1960).

<sup>4</sup> Spanel v. Mounds View School District, 264 Minn. 279, 118 N.W. 2d 795 (1962).

<sup>5</sup> Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W. 2d 618 (1962).

immunity of the school district or relieve the individual employee from his liability for negligence.<sup>1</sup>

Most of the reasons for immunity were considered and rejected by the Illinois Supreme Court in the Molitor case. The opinion quotes with approval these statements from other decisions attacking the doctrine:

The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim "the king can do no wrong" should exempt the various branches of the government from liability from their torts, and that the entire burden of damage resulting from the wrongful acts of government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government and where it justly belongs....<sup>2</sup>

Some jurisdictions have been able to distinguish a particular act as a proprietary function and have held that immunity would not apply to that activity. It was held in Sawaya v. Tucson High School District,<sup>3</sup> that a school district acted in a proprietary function when it leased its football stadium for compensation to another school district, and that it was liable for an injury sustained as a result of negligence in the maintenance of the stadium.

---

<sup>1</sup>Iowa Code Sec. 517 A. (1966).

<sup>2</sup>Molitor v. Kaneland Community Unit District No. 302, 18 Ill. 2d 11, 163 N.E. 2d 89 (1960).

<sup>3</sup>Sawaya v. Tucson High School District, 78 Ariz. 389, 281 P. 2d 105 (1955).

The adoption of "save harmless" statutes in New Jersey, Connecticut, and Wyoming and statutory permission for the school district to assume the liability of a teacher in Oregon and Massachusetts has effectively circumvented the doctrine of immunity.<sup>1</sup>

## VII. TRENDS IN LIABILITY LAWS IN OUR FIFTY STATES

Since 1959 there has been a definite trend away from immunity; the difference among the jurisdictions appearing to be one of velocity rather than philosophy. It is a matter of gradual erosion of the doctrine versus immediate abolishment, with the additional factor, in the latter case, whether abolishment is by judicial decision or legislative action.

In 1959, courts in two states, Illinois,<sup>2</sup> and Wisconsin,<sup>3</sup> abolished the tort immunity of school districts. Minnesota, in 1962, gave notice through its Supreme Court that it did not intend to recognize governmental immunity as a defense to tort claims against school districts after the adjournment of the 1963 regular session of the state legislature.<sup>4</sup>

---

<sup>1</sup>National Education Research Division, loc. cit.

<sup>2</sup>Molitor v. Kaneland Community Unit District No. 302, 18 Ill. 2d 795 (1962).

<sup>3</sup>Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W. 2d 618 (1962).

<sup>4</sup>Spanel v. Mounds View School District, 264 Minn. 279, 118 N.W. 2d 795 (1962).

Municipal tort immunity has been abolished in twelve states since 1957.<sup>1</sup> While this does not directly affect the immunity of the school districts necessarily, it would seem to be some indication of the attitude of the courts of the respective states toward the immunity doctrine.

In Boyer v. Iowa High School Athletic Association, the Supreme Court of Iowa, by a five to four decision, declined to abolish governmental immunity at that time. Chief Justice Garfield, who wrote the majority opinion, pointed to language in several Iowa statutes which he said demonstrated legislative recognition of the immunity doctrine. In view of such recognition, it was the majority opinion that abolition of the immunity doctrine was a matter for legislative rather than judicial action.<sup>2</sup> The dissent, written by Justice Moore, preferred court abolishment, citing Haynes v. Presbyterian Hospital Association,<sup>3</sup> in which the court abrogated the doctrine of immunity of charitable institutions for negligence of its agents:

The law's emphasis generally is on liability, rather than immunity, for wrongdoing. Charity is generally no defense. It is for the legislature, not the courts, to create and grant immunity. The

---

<sup>1</sup>J. Robert Hard, "Liability of Public Bodies, Officers, and Employees," 11 Drake Law Review 79 (1962).

<sup>2</sup>Boyer v. Iowa High School Athletic Association, 256 Iowa 337, 127 N.W. 2d 606 (1964).

<sup>3</sup>Haynes v. Presbyterian Hospital Association, 241 Iowa 1269, 45 N.W. 2d 151 (1950).

fact that the courts may have at an early date, in response to what appeared good as a matter of policy, created an immunity does not appear to us a sound reason for continuing the same when under all legal theories it is basically unsound, and especially so when the reasons upon which it was built no longer exist.

It is our responsibility to alter decisional law to produce common sense justice. As to the doctrine of governmental immunity we have already waited too long. I would join the vast majority of the other courts in abrogating it.

The Iowa legislature, in passing the Iowa Tort Claims Act permitting the state to be sued, has indicated its feeling about the doctrine of governmental immunity.<sup>2</sup> This leaves Iowa in the position of having abolished immunity for the "sovereign" body the state, and continuing immunity for derivative governmental bodies including school districts.

No other conclusion can be drawn from the changes that have taken place since 1959, but that the doctrine of immunity will be subjected to additional attacks, both by the legislatures and the courts of the several states.

---

<sup>1</sup>Boyer v. Iowa High School Athletic Association, 256 Iowa 337, 127 N.W. 2d 606 (1964).

<sup>2</sup>"Iowa Tort Claims Act," Acts. 61 G.A. (1965) Ch. 791.

## CHAPTER II

### LIABILITY IN THE SELECTED AREA OF PHYSICAL EDUCATION

Accidents in the physical education classes are numerous and result from a variety of causes. Court cases relating to the field of physical education indicate that pupil injuries occur when gymnasium equipment is defective, the play area is overcrowded, there is inadequate supervision of the exercise or sufficient warning of its dangers, the instruction is not sufficient, other pupils conduct themselves in a negligent manner, and where pupils are spectators at sports events.

The physical education teacher is under a duty to exercise reasonable care to prevent injuries and to assign pupils to such activities as were within their abilities, and to properly and adequately constitutes actionable negligence on the part of the teacher.<sup>1</sup>

#### I. ACCIDENTS IN THE RELATED AREA OF PHYSICAL EDUCATION

Statistical studies indicated that perhaps the greatest number of school accidents occurred in physical education or in activities related directly to this field.<sup>2</sup>

In 1960, public junior high schools were selected at

---

<sup>1</sup>Jean K. Dissinger, "Accidents in Junior High School Physical Education Programs," The Research Quarterly, XXXVII (December, 1966), 495.

<sup>2</sup>Ibid.



random from directories published by the state department of public instruction in the state of Iowa, Illinois, South Dakota, Minnesota, Nebraska, Wisconsin, and Missouri, for the purpose of investigation of the incidents, resulting injuries, and prevalent causes of accidents in public high schools.<sup>1</sup>

This study investigated the incidence, resultant injuries, and prevalent causes of accidents in 207 public junior high schools. Data evinced that three-fifths of the 1,626 accidents occurred either in physical education or in activities related directly to this field. Activities responsible for the greatest percentage of accidents to both sexes and or accidents to boys only were basketball, football, softball, and baseball. Uppermost for girls were basketball, volleyball, and stunts and tumbling. Accidents pervading interscholastic practice, inter-school games, and intramurals induced higher severity indexes than did accidents in the physical education classroom. Activities incurring the more severe student injuries were wrestling, football, and track. Diagnosed in the highest percentage of cases were the sprain, fracture, and bruise. The extremities were the parts of the body involved most frequently. Prevalent immediate causes of injury were falling, striking, or being struck by play equipment, and collision. Evidence relating to predisposing cause proved inconclusive.<sup>2</sup>

Public school authorities are entrusted with the safety of students during school hours, and the physical education teacher, who does not enjoy immunity from legal liability in Iowa, must be alert to guard against accidents and injuries.<sup>3</sup>

---

<sup>1</sup>Ibid.

<sup>2</sup>Ibid.

<sup>3</sup>Wihlton v. Crow, D.C. (Iowa) 199 F. Supp. 682 (1961).

The liability of teachers in physical education is no greater than for other teachers but opportunities for injury are greater. Injuries may result from equipment, curriculum, supervision, first aid, and transportation.

Equipment. What is meant by athletic apparatus of appliance or equipment? A 1949 case would illustrate the court's interpretation of this term. The plaintiff was injured during lunch hour while playing "keep away" in the schoolyard with a football. He was tackled by another pupil and the participants in the game piled on the plaintiff. The court stated:

Our inquiry is narrowed down to the question of whether the football owned by the school district and furnished to the pupils in the instant case is to be considered an "athletic apparatus or appliance". In making determination of this question, we note first, that in a broad, general sense, a football might be considered to be athletic apparatus or appliance. When, however, the relation of the words used, as to each other, and the text of the statute as a whole are carefully studied, we think that the most reasonable interpretation of what the legislature intended by the words "athletic apparatus" is that it had reference to some sort of more or less permanently located equipment, such as swings, slides, traveling rings, teeterboards, chinning bars, and so forth, and not something as highly mobile as a football. The words "situated," "operated," and "maintained," as they are used in the statute in reference to "athletic apparatus or appliance," lend credence to this interpretation, for it is certainly incorrect to refer to a football as being "situated, operated, or maintained" by such school district.<sup>1</sup>

---

<sup>1</sup>Briscoe v. School District No. 123 Grays Harbour County, 201 P2d 697 (1949).

It was held by the Washington Supreme Court, that an injured spectator be allowed to recover for damages suffered when struck by a baseball thrown by a member of a high school team. A state statute precluded lawsuits against a school district for injuries related to an athletic apparatus or appliance. The court said that the baseball was not within the scope of the statute.<sup>1</sup>

The courts have held that one of the first responsibilities of the physical education teacher is to make certain equipment being used is free from defects. Many items of physical education equipment, presumed safe, have been defective or have not been used properly. Their construction or maintenance have been faulty or the equipment has been placed in an unsafe location resulting in pupil injuries and liability suits against the teacher.<sup>2</sup>

Another cause of injury through equipment was the failure of the physical education teacher to provide mats where their need was clearly indicated. A frequent source of injury was the failure to provide mats in proper places such as on a brick wall used as the finish line of a race,<sup>3</sup>

---

<sup>1</sup>Barnecut v. Seattle School District, No. 1, 389P 2d 904 (1964).

<sup>2</sup>Fein v. Board of Education, 1951 Supp., 104 N.Y.S. 2d 996 (1951).

<sup>3</sup>Katterschinsky v. Board of Education, New York City, 215 App. Div. 695, 212 N.Y. Supp. 424 (1925).

on the floor used for gymnastic stunts,<sup>1</sup> and around the base of gymnastic equipment and areas where wrestling was carried on.<sup>2</sup>

A piano, improperly supported, also resulted in a pupil injury,<sup>3</sup> gymnasium lockers which were negligently installed, maintained, and inspected, fell on a student,<sup>4</sup> and in an Oregon case, an injury occurred when radiators were improperly protected and padded.<sup>5</sup> The use of unslaked lime on the playing fields in Minnesota effected a law suit.<sup>6</sup>

A recent case concerning equipment occurred in Minnesota, March, 1965. During a physical education activity, a second grade child stepped on a jump rope while jumping and pulled the wooden handle of the rope out of the teacher's hand. This wooden handle struck the child. Suit was brought against the teacher for negligence on the part of the teacher. The court held that the evidence failed to establish any

---

<sup>1</sup>Combareri v. Board of Education of Albany, 246 App. Div. 127, 284 N.Y. Supp. 892 (1936), affirmed 282 N.Y. 741.

<sup>2</sup>Fein v. Board of Education, 104 N.Y.S. 2d 996 (1951).

<sup>3</sup>Dawson v. Tulare High School District, 98 Cal. App. 138, 276 P. 424 (1929).

<sup>4</sup>Freund v. Oakland Board of Education, 28 Cal. App. 2d 246, 82 P. 2d 197 (1938).

<sup>5</sup>Specer v. School District, 121 Oregon 511, 254 P. 357 (1927).

<sup>6</sup>Mokovich v. Independent School District, 177 Minn. 445, 225 N.W. 292 (1929).

actionable negligence on the part of the teacher since this was a rope of the type normally used by children in jumping rope. It was the court's opinion that the teacher could not have anticipated that the rope, six feet in length, if stepped upon would have resulted in the wooden handle striking the child causing injury.<sup>1</sup>

Many equipment concerns are cared for immediately by the physical education teacher, but in other instances, if the board of education is informed of the dangerous situation of defective equipment it is responsible for its correction. It is important that the physical education teacher inform the proper authority about a dangerous situation that needs to be corrected, as this constitutes the requirement of "due care" on the part of the physical educator.<sup>2</sup>

Curriculum. The problem of the content of the physical education curriculum subjecting students to unduly dangerous or unreasonable requirements has been raised in the courts resulting in decisions of significant consequence to the physical education curriculum. These cases were outside the state of Iowa, but their rulings could affect future Iowa cases in the area of curriculum.

A 1938 California court, after three hearings, ruled a pupil could recover from a school district for damages

---

<sup>1</sup>Wire v. Williams, ---, Minn., ---, 133 N.W. 2d 840 (1965).

<sup>2</sup>38 Am. Jur., Negligence Sec. 15.

sustained in performing the tumbling exercise, "roll-over-two", in a regular physical education class since the exercise was unsuitable for high school girls. The court said:

In deciding whether the employees of the appellant (school district) used ordinary care, it was proper for the jury to consider not only whether the exercise was inherently dangerous, but also whether they should have allowed or required the respondent to take instruction in tumbling. It is a matter of common knowledge that some students show much more aptitude for athletics than do others. Some...find games or stunts of any kind difficult. Frequently students of the same age have different capacities for physical training. Also, some forms of exercise are considered entirely proper for boys while too strenuous or otherwise undesirable for girls. In the exercise of ordinary care, it was the duty of the teachers employed by the school district to take all of these factors, with others, into consideration in determining the kind of instruction to be given the respondent...Under the circumstances shown in this case the issue of negligence was solely one for the determination of the jury....

While it does not lie within the province of the jury to determine whether a certain subject should be taught, school authorities may be guilty of negligence in requiring a student to take a particular course of study.<sup>1</sup>

There was a dissent in this case and one judge vigorously disagreed with the opinion of the court, citing that juries of laymen in California became the composers of permissible courses of study in physical education. The judge stated:

It seems to me the majority has totally disregarded the rights of boards of education and trustees of school districts to provide courses in physical education in accordance with power vested in them by the law of the

---

<sup>1</sup> Bellman v. San Francisco High School District, 11 Cal. 2d 576, 81 P2d 274 (1938).

state, and has placed within the power of a jury to say whether such courses should be pursued....Courses in physical education will thus be curtailed or eliminated, depending upon the degree of "guess" indulged in by the school authorities on what a jury would say about it....

...Every athletic event, the R.O.T.C., the courses in physics, chemistry, the simple game of tennis or hockey--even the old-fashioned "wand" exercises--would likewise be "inherently dangerous" because injury might result in any of them. Is it intended to hold that the courts and not the school authorities should determine what courses of instruction should be given?<sup>1</sup>

In New York, a similar case arose which allowed a pupil in an elementary grade to recover damages for a head-stand exercise injury. The exercise was described by the court as an unreasonable one.<sup>2</sup>

Executing a tumbling exercise during a regular physical education class, a pupil sustained injuries to her leg. It was claimed that the physical education teacher was negligent in directing the student to do an exercise which the teacher knew the student could not perform, in failing to properly instruct the student, and in refusing the student's protests.<sup>3</sup>

The lower court dismissed this case on the grounds that the school district was immune under statute. However,

---

<sup>1</sup>Bellman v. San Francisco High School District, 11 Cal. 2d 576, 81 P. 2d 274 (1938).

<sup>2</sup>Gardner v. State of New York, 256 App. Div. 385, 10 N.Y. Supp. 2d 274 (1939).

<sup>3</sup>Rodrequez v. Seattle School District No. 1, 401 P. 2d 326 (1965).

the pupil appealed, and the court held that the cited statute did not bar the action. The court stated that the injury resulted not from negligent equipment, but from acts requiring the student to perform stunts she was known incapable of performing safely. The judgment of the lower court was reversed and the case remanded for further proceedings.<sup>1</sup>

These cases illustrate the effect of juries determining, to a degree, the content of physical education classes as to what exercises are proper for certain pupils.

Supervision. Lack of proper supervision is negligence, thus making a teacher personally liable for pupil injury. Under the doctrine "in loco parentis," the teacher takes the place of the parent in exercising the care that a parent of ordinary prudence would exercise under similar circumstances. Too little, or improper supervision are important in considering the degree of supervision which constitutes negligence. This is an area of concern for physical education teachers since accidents can happen no matter how close the supervision. The question to be answered is whether or not the supervision provided is adequate for the particular situation.

The courts have defined "the standard of care" owed by teachers to their pupils as follows:

A teacher's relationship to the pupil under his care and custody differs from that generally existing between a public employee and a member of the general

---

<sup>1</sup>Ibid.



public. In a limited sense, the teacher stands in the parent's place in his relationship to a pupil... And has such a portion of the powers of the parent over the pupil as is necessary to carry out his employment. In such relationship, he owes his pupils the duty of supervision....If the teacher is liable for misfeasance, we find no sound reason why he should not be also held for nonfeasance....<sup>1</sup>

Liability was found against teachers where the general rule of tort immunity for the school district prevailed, as in Iowa, and against school agencies where there was an absence of such immunity. Teachers were found liable for failing to supervise properly pupils crossing a public street,<sup>2</sup> not locking a gymnasium, which when left unsupervised was dangerous for children,<sup>3</sup> allowing an injured student to participate in a football game,<sup>4</sup> and for failure of a teacher to be on the school grounds.<sup>5</sup>

A negligence action was brought against a teacher in Vermont charging that the standard of care owed by teachers to pupils under their care and supervision was lacking. This

---

<sup>1</sup>Leibee, op. cit., p. 74.

<sup>2</sup>Eastman v. Williams, 207 A.2d 146, VT. Sup. Ct. (1965).

<sup>3</sup>Longo v. Board of Education, 235 App. Div. 733, 255 N.Y. Supp. 719 (1932).

<sup>4</sup>Morris v. Union High School District A, King County, 160 Wash. 121, 294 P. 998 (1931).

<sup>5</sup>Ogando v. Carquinez School District, 24 Cal. App. 2d 567, 75 P. 2d 641 (1938).

was a question not previously decided in Vermont. In this suit, a nine year old child was injured on a merry-go-round platform which had a three-inch piece of board missing on one part of its edge and a small hole through the floor near its center. The child claimed he was injured when he stepped through the hole, although how he was injured was a matter of conflict among the child, his parents, and the teacher on duty. The court held that the presence of the hole should have caused a prudent person to foresee harm and the judgment in favor of the teacher was reversed and the case remanded for a new trial.<sup>1</sup>

While on a school outing in Oregon, a six year old child was crushed by a log which was rolled by a large wave as it surged up on the beach. The courts held the teacher negligent in failing to exercise proper supervision at the time of the accident, since it was common knowledge that accidents of this type had occurred along the Oregon coast and therefore the accident was foreseeable.<sup>2</sup>

In New York, a physical education teacher was liable for allowing two boys, lacking in instruction, to engage each other in boxing resulting in a serious injury to one of the boys.<sup>3</sup>

---

<sup>1</sup>Eastman v. Williams, 207 A.2d 146, Vt. Sup. Ct. (1965).

<sup>2</sup>Morris v. Douglas County School District No. 9, 403 P.2d 775 (1965).

<sup>3</sup>LaValley v. Stanford, 272 App. Div. 183, 70 N.Y.S. 2d 460 (1947).

A participant in a baseball game was injured when he tripped over a spectator and fell on a bench while attempting to catch a foul ball. The game was supervised by officials. The court ruled that the plaintiff was entitled to damages since the officials were negligent in not ordering the crowd back from the playing area.<sup>1</sup>

It was noted by the court in New York where a five year old child was injured in a fall from a swing while under the school's supervision, that the school only had a duty to guard against foreseeable injuries. This was not a foreseeable occurrence.<sup>2</sup>

In 1961, it was also held for a school board that "general supervision" by a teacher was all that was required.<sup>3</sup>

Schools have a duty to provide adequate supervision if pupils are required to remain outside the school building between tests.<sup>4</sup>

Courts have generally agreed that the responsibility for supervision must not become too strict or severe lest it lead to unreasonable curtailment of physical education activities.

---

<sup>1</sup>Domino v. Mercurio, 234 N.Y.S.2d 1041 (1962).

<sup>2</sup>Klein v. Hoffman, 15 App. Div.2d 899 N.Y. (1961).

<sup>3</sup>Nestor v. City of New York, 211 N.Y.S.2d N.Y. (1961).

<sup>4</sup>Cianci v. Board of Education, 238 N.Y.S.2d 547 N.Y.S. (1963).

What constitutes negligence is a question of fact in all cases. A greater degree of care is required in some situations than in others. The determination of whether the acts complained of are negligent is by the jury. The best protection from liability a teacher has lies in the use of extreme care in all cases in which it is possible for pupil injury to occur.<sup>1</sup>

Supervision by Student Teachers. The legal status of non-certified personnel in assisting with teaching or in supervising students has raised a question of liability.

In New York, a senior at a state teacher's college, who had completed a course in tests and measurements in physical education, administered a fitness test to an applicant for admission to the college. The applicant's knee was injured during one of the tests. The court ruled that the college staff owed the duty of reasonable care in administering the tests and that in permitting a uncertified student to administer the tests, the college staff violated this care.<sup>2</sup>

A few states have established the status of such personnel. Student teachers in California are issued a temporary certificate by the county superintendent of schools. In Oregon, student teachers have the same status as regular teachers. In Connecticut, student teachers are protected under the "save harmless" statute. The status of student teachers in most jurisdictions is not clear. A common definition of a teacher is a certified person employed by a board of education. In general, student teachers are not employed. What then is the relationship between a student teacher and a board of education?; and between a student teacher and his pupils?....

In those jurisdictions having common law immunity, would the supervising teacher be liable? Is he responsible for the negligence of his assistant(s)?

---

<sup>1</sup>Robert R. Hamilton and Paul R. Mort, The Law and Public Education (Brooklyn: The Foundation Press, Inc., 1959), p. 295.

<sup>2</sup>Britton v. State, 103 N.Y.S.2d 485 N.Y. (1951).

The attorney general of Arizona has ruled that--

"A school district may not employ non-certified people to supervise playgrounds during recess and other intermissions, but we do not believe that the law does not prevent non-certified people from being employed to assist a certified teacher in the supervision of playgrounds so long as the teacher is present and supervising the assistant....The same answer would apply to the employment of non-certified people in the supervision of children in the cafeteria. A certified teacher must be present and in complete control of the non-certified employees, so that the supervision will be actually under the personal direction of the certified teacher." (Opinion No. 63-271C, R196, March 13, 1963).<sup>1</sup>

In Iowa, school districts have governmental immunity, but school personnel are liable for their acts of negligence.<sup>2</sup> Therefore, an injured pupil could bring action against the supervising teacher, the assistant teacher, and possibly the educational institution which furnished the assistant teacher.

First Aid. A substantial number of the accidents that befall students at school occur in the physical education classes or related physical activities. The physical education teacher in Iowa is obligated to render first aid to the injured since failure to do so would make the physical education teacher negligent. There exists a duty to render first aid and there exists a duty not to render treatment. The physical education teacher cannot and should not render any treatment other than emergency aid and circumstances

<sup>1</sup>Leibee, op. cit., pp. 43-44.

<sup>2</sup>Larsen v. Independent School District, 223 Iowa 691 272 NW 632 (1937).

dictate what a reasonably prudent and careful physical education teacher should do under these and similar circumstances.<sup>1</sup>

The general principle governing action or inaction is that one is not under a legal duty to go to the aid of another unless he is in some way at fault in causing his injury, or unless there is some definite relationship between the parties that is regarded as imposing a duty to act.<sup>2</sup>

This legal duty is imposed upon physical educators for two reasons. Our courts have consistently held that teachers stand in loco parentis to a pupil, which means that they have a parent's duties and responsibilities while the child is at school. They are obligated by this relationship to render the best assistance they can. Secondly, since all physical educators must take and successfully pass a course in first aid as part of their formal preparation, it would seem to qualify them with the knowledge and skill to render first aid in an emergency.

The obligation to render first aid incumbent upon the physical educator in an emergency is a duty to administer first aid and nothing more than first aid. The responsibility extends only to an emergency situation....What constitutes emergency treatment depends upon the nature of the injury, and the surrounding conditions.<sup>3</sup>

A quarterback suffered an injury to his back during a pre-season high school football scrimmage. Unable to get up, the coach tested the player for a neck injury which proved,

---

<sup>1</sup>Sondra Y. Gold and Gerald F. Gold, "First Aid and Legal Liability," Journal of Health--Physical Education--Recreation, XXXIV (January, 1963), 42.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

at this time, negative. The plaintiff was then carried from the field by other players. It was the medical opinion that the plaintiff's removal caused damage to his spinal cord resulting in his permanent quadriplegic condition. This negligent removal aggravated the original injury and the court awarded the plaintiff, \$206,804.00, plus interests and costs.<sup>1</sup>

A child was injured and subsequently died from loss of blood when a vein was cut as his arm went through a glass door while playing at recess. The court stated that the teacher was negligent in not being present so that first aid measures could have been taken to stop the flow of blood. The implication from this case was that first aid services were required of teachers.<sup>2</sup>

The physical educator, just as any other teacher, stands in a special relationship to his pupils which the law recognizes and therefore holds him responsible for the safety and well-being of the pupil. In the past few decades, there has been an increase in the importance of physical education and recreation in the school curriculum for both boys and girls from the elementary to the college levels. This newly acquired prestige has been a widening of the physical education program to include many new sports and activities requiring the use of special apparatus and equipment. With the new emphasis on physical fitness in our school curriculums, the greater number of students required to participate, and the more varied programs, it is

---

<sup>1</sup>Welch v. Dunsmuir Joint Union High School District, 326 P.2d 633 Cal. (1958).

<sup>2</sup>Ogando v. Carquinez School District, 24 Cal. App. 2d 567, 75 P. 2d 641 (1938).

imperative that the physical educator know the rudiments of first aid and, what is more important, how to apply them in an emergency.<sup>1</sup>

Sending a player, who was ill, into a game was held a grossly negligent act on the part of a coach.<sup>2</sup>

Where proper medical treatment was alleged to have caused further injury, the court held that the burden of proof rested with the plaintiff in showing that the treatment deviated from accepted standards.<sup>3</sup>

To determine whether first aid was performed in a negligent manner, the court will apply the "reasonable man" test. The physical education teacher's actions are measured by the court as to what a reasonable and prudent and careful physical education teacher under like circumstances would do.

Physical education teachers, because of their training in first aid, should not hesitate to administer it in the manner which is approved by the American Red Cross. If they undertake their duty in a careful and prudent manner, having regard to the proper procedures of first aid, they need not worry about a subsequent lawsuit based on their negligence.<sup>4</sup>

---

<sup>1</sup>Gold and Gold, loc. cit.

<sup>2</sup>Morris v. Union High School District, No. 9, 403 P2d 775 (1965).

<sup>3</sup>Renrich v. City of Newark, 181 A.2d 25 N.J. (1962).

<sup>4</sup>Gold and Gold, op. cit., p. 42.



It is possible that if a physical education teacher in Iowa undertook to provide treatment for a sick or injured pupil even though he would not be required by law to provide treatment, he is then bound to act with reasonable prudence and care to the end that if his effort be unavailing it shall at least not operate to increase the injury which he seeks to alleviate.<sup>1</sup>

Transportation. The legal problems involved in the use of private automobiles for transporting pupils to athletic contests presents legal danger for the physical education teacher. The courts have consistently ruled that the teacher may be held liable for damages if gross negligence is proved.

In Iowa, there exists a 'guest statute' which protects drivers, (teacher-driver) from suits by persons conveyed gratuitously. However, if the driver is guilty of recklessness, he may be liable.<sup>2</sup>

Iowa, which has governmental immunity, resolved the problem of transportation by allowing school districts to purchase insurance to protect drivers or other employees with respect to negligence in transporting pupils on school buses. This does not apply to the use of private motor

---

<sup>1</sup>Carey v. Davis, 190 Iowa 720, 180 N.W. 889.

<sup>2</sup>Iowa Code, Sec. 321.494 (1965).

vehicles for transporting pupils to and from school activities and it is recommended that school districts use school district owned or public utilities commissioned licensees. Private transportation involves too many risks.<sup>1</sup>

If it is necessary to use private transportation, the following are highly important:

1. Select drivers with extreme care. Do not use those who are on probation or who have "bad reputations" as drivers.
2. Check the kinds and amounts of insurance on the car. Be certain that coverage is complete and adequate.
3. Determine, if you are able, the status of passengers in the car(s) on the trip. Are they "guests" or not.
4. If a student is a driver, have a mature adult in each car.
5. Give complete instructions for the trip--driving speed, route, meeting places, etc.
6. Beware of the "general fitness" of the car(s), tires, lights, wipers, etc.
7. If the owner-driver of the car is a school employee, is the trip within the scope of the employee's employment?<sup>2</sup>

The "guest statute", subject to court interpretation, makes it important for the teacher-driver to know the status of passengers being transported in private cars. Are they "guests"?; if so, proof of willful and wanton negligence on behalf of the driver may constitute liability; if not, mere negligence may result in liability.<sup>3</sup>

---

<sup>1</sup>Leibee, op. cit., p. 54.

<sup>2</sup>Ibid., p. 67.

<sup>3</sup>Iowa Code, Sec. 321.494 (1907).

The Iowa Supreme Court has stated:

If the carriage of a person confers a benefit only on the person to whom the ride is given and no benefit other than such as are incidental to hospitality, companionship, or the like, upon the person extending the invitation, the passenger is a guest within the statutes.<sup>1</sup>

Cheerleaders, who were transported to a school athletic event, were denied recovery under the "guest statute" in Iowa, since the driver was not paid for his services. Because the passengers were "guests", proof of recklessness as distinguished from mere negligence was required. The driver had the consent of the owner of the car, his father, and was given permission and safety instruction from the athletic director.<sup>2</sup>

However, the Kansas Supreme Court held that a student transported during school time by another student, who had the consent of his father to use the automobile, was not a guest in the automobile under the "guest statute". It was held that the pupil enjoyed the status of a person riding a school bus and that the liability was on the driver of the car, not the owner. The student-driver did not receive any compensation for his driving services.<sup>3</sup>

The Delaware court allowed a pupil being transported by a teacher to a doctor, at the mother's request, to recover

---

<sup>1</sup> Bodaken v. Logan, 254 Iowa 230, 117 N.W.2d 470 (1962)

<sup>2</sup> Fessenden v. Smith, 124 N.W.2d 554, Iowa (1964).

<sup>3</sup> Kitzel v. Atkeson, 245 P.2d 170, Kansas (1952).

damages. The court ruled that the teacher received benefit and compensation for performing this duty through his salary and thus the pupil was not considered a guest under the "guest statute".<sup>1</sup>

Allowing pupils to be transported home from a junior college credit tennis course in a defective car resulted in an automobile accident and subsequently a suit against the tennis coach. The court pointed out that the tennis instructor had "implied power" to provide transportation for the class, but failed to exercise "due care" in carrying out his responsibilities.<sup>2</sup>

It can be seen from the cases discussed that the individual coach, teacher, automobile owner or driver is subject to the usual rules governing tort liability when transporting students, and must exercise the required degree of care if he is to avoid the serious legal consequences of an injurious or fatal accident. It is highly important for school personnel to know whether or not each has protection in these and similar circumstances. Protection through the doctrine of respondeat superior, permissive legislation, save harmless statutes, or state education association insurance-if pupils are transported in privately-owned motor vehicles to and from school sponsored activities. If not, then it is strongly recommended that each provides himself with adequate insurance-adequate coverages and amounts.<sup>3</sup>

---

<sup>1</sup>Fruitt v. Gaines, 317 F.2d 461, Delaware (1963).

<sup>2</sup>Hanson v. Reedly School District, 43 Cal. App.2d 643, 111P.2d 415 (1941).

<sup>3</sup>Leibee, op. cit., pp. 69-70.

## II. INSURANCE

Recognition of the personal liability of a physical education teacher should suggest to the individual teacher the wisdom of obtaining personal insurance coverage. There are at least two alternative methods for the acquisition of liability insurance readily available to a teacher in Iowa.

The Iowa State Education Association provides liability coverage for each active member of the organization and to student members involved in student practice teaching. The policy promises to pay on behalf of the insured member, all sums (up to the policy limit of \$150,000) which he shall become legally obligated to pay as damages because of bodily injury, sickness, or disease, including death, sustained by any person, and damages to property, arising out of an occurrence in the course of his duties as an instructor, member of a faculty or teaching staff. Specifically excluded are losses involving the use of automobiles, an injury intentionally caused, except for corporal punishment, if the administration of corporal punishment is not prohibited by state law.<sup>1</sup> It should be noted, as a matter of interest, that corporal punishment is not prohibited in Iowa.<sup>2</sup> The

---

<sup>1</sup>Horace Mann Mutual Insurance Company, Springfield, Illinois, Master Policy No. Iowa 2 ELA, Certificate of Coverage, I.S.E.A. Members.

<sup>2</sup>Tinkham v. Kale, 452 Iowa 1303, 110 N.W.2d 258 (1961).

punishment must be reasonable in degree considering all the circumstances.<sup>1</sup>

Business pursuits endorsements to homeowners and comprehensive personal liability policies can be secured from many of the private insurance companies. A teacher need only request, of his insurance agent, that the endorsement be added to an existing insurance policy. The coverage afforded is basically the same as the insurance available through the Iowa State Education Association.

### III. STANDARDS FOR A REASONABLE, PRUDENT AND CAREFUL PHYSICAL EDUCATOR

An important consideration in the teaching of physical education is the standards established by the individual teacher. If these standards or codes are followed, many of the accidents resulting from lack of "foreseeability" might be eliminated.

A teacher of physical education should have a proper teacher's certificate in full force and effect, operate and teach at all times within the scope of his employment as delimited and defined by the rules and regulations of the employing board of education and within the statutory limitations imposed by the state.<sup>2</sup>

---

<sup>1</sup> Ibid.

<sup>2</sup> Arthur J. Muniz, "The Teacher, Pupil Injury, and Legal Liability," Journal of Health-Physical Education-Recreation, XXXIX (September, 1962), 28.

A safety code for the physical education teacher in Iowa might be:

1. Knows the health status of his students and/or players if he has them engage in highly competitive and/or rough activities.
2. Required medical approval for participation following serious illness or injury.
3. Inspects all class and personal equipment at regular intervals.
4. Does not expose students to possible injury by using defective equipment.
5. Conducts an activity in a safe area.
6. Foresees possible injury if activity is conducted thusly.
7. Analyzes his teaching and coaching methods for the safety of the students and players.
8. Assigns only qualified personnel to conduct or supervise an activity.
9. Keeps the activity within the ability of a student.
10. Performs the proper action in the event of injury.
  - (1) Renders first aid (2) ~~Summons~~ medical attention and (3) Removes injured to medical attention
  - (1) or (1) and (2) or (1) and (3) or (2) or (3).
11. Does not diagnose or treat injuries.
12. Instructs adequately prior to permitting performance.
13. Provides adequate protective equipment.
14. Keeps accurate records of all accidents and action(s) taken.

#### IV. TRENDS IN LIABILITY IN THE AREA OF PHYSICAL EDUCATION

The great majority of states adhere to archaic doctrine "the King can do no wrong" - the King being the state or a corporate subdivision thereof.<sup>2</sup>

"The courts and/or the legislatures in a number of states have taken a more realistic approach and have attempted to resolve or partially resolve the problem..."<sup>3</sup>

---

<sup>1</sup>Leibee, op. cit., p. 27.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

These approaches are;

GROUP I. States in which governmental immunity of school districts have been abolished.

ALASKA, ARIZONA, CALIFORNIA, HAWAII, ILLINOIS, MINNESOTA (1960), NEW YORK (CITY), WASHINGTON, WISCONSIN (EXCEPTIONS)

In these states, the school district is liable for negligence in the performance of a governmental act. The school district is also liable for the negligent acts of employees, and are jointly or severally liable. Action would be brought against one or both.<sup>1</sup>

GROUP II. States in which school districts may purchase liability insurance to protect the districts against claims arising from negligent acts for which the districts are responsible or assume responsibility as a matter of policy.<sup>2</sup>

Is Immunity Waived by such Purchase?

	<u>No</u>	<u>Yes</u>	<u>To What Extent</u>
Alaska		x	
Arkansas	x		Completely
California		x	
Colorado	x		
Connecticut	x		
<u>Iowa</u>	x		
Minnesota		x	Extent of Policy
New Hampshire	x		
New Jersey	x		
New Mexico		x	Extent of Policy
New York (City)		x	Completely
New York	x		
North Carolina		x	Extent of Policy
North Dakota	x		
Oregon	x		
Wisconsin			Completely <sup>3</sup>
Wyoming	x		

<sup>1</sup>Leibee, op. cit., p. 27.

<sup>2</sup>Ibid., p. 28.

<sup>3</sup>Ibid.



GROUP III. States in which school districts may purchase liability insurance protecting their employees against claims arising out of employees' negligence.<sup>1</sup>

Is District's Immunity Waived by such Purchase?

	<u>No</u>	<u>Yes</u>	<u>To What Extent</u>
California		Abolished	
Colorado	x		
Florida		AGO 1953	
Illinois		Abolished	
<u>Iowa</u>	x		
Massachusetts	x		
New Hampshire	x		
North Dakota	x		
Oregon	x		
Pennsylvania	x		
South Dakota	x		
Vermont		x	Extent of Policy
Washington		Abolished <sup>2</sup>	
Wisconsin		Abolished <sup>2</sup>	

GROUP IV. Another procedure used to protect employees of school districts is found in seven (7) states - the "save harmless" procedure.<sup>3</sup>

	<u>Permissive</u>	<u>Mandatory</u>
California		x
Connecticut		x
Massachusetts		x
Minnesota (1963)		x
New Jersey		x
New York		x
Wyoming	<sup>4</sup> x	

<sup>1</sup> Ibid, p. 29.

<sup>2</sup> Ibid., pp. 29-30.

<sup>3</sup> Ibid., p. 30.

<sup>4</sup> Ibid., pp. 30-31.

GROUP V. States which have legislated a method of recovery other than common tort law action.<sup>1</sup>

Alabama	State Board of Adjustments
Hawaii	State Tort Liability Act
North Carolina	Tort Claims Act <sup>2</sup>

GROUP VI. State education associations which have purchased liability insurance protecting members for negligent acts committed during the scope of their employment. (List not complete).<sup>3</sup>

Colorado	Montana
Delaware	New Mexico
Idaho	Oregon
<u>Iowa</u>	South Dakota
Maine	Texas
Maryland	Utah
Michigan	Vermont
Minnesota	Virginia
	West Virginia

The amounts of insurance range from \$10,000.00 to \$100,000.00<sup>4</sup>

The rule of governmental immunity from liability in torts is deeply rooted in American jurisprudence. Cultural changes, however, have made our educational communities aware of the public's thrust in the law of school board liability. Generally, governmental immunity for tort liability prevailed, but over the years some states created statutory or judicial exceptions to this rule which subsequently made school districts responsible for their negligence.

---

<sup>1</sup> Ibid., p. 31.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

Iowa has governmental immunity with school personnel liable for their acts of negligence.

The trend in school district liability decisions is outside the state of Iowa but it could have a definite relationship to future judicial decisions in Iowa on school liability.

The methods of change in liability are; the abolishment by some states of the doctrine of immunity; authorization of school boards to purchase insurance to cover liability; establishment of state boards of adjustments; "save harmless" procedure to protect the school district employee.

### CHAPTER III

#### SUMMARY AND CONCLUSION

It was the purpose of this study to alert those individuals who are intrusted with the safety of students participating in physical education programs, to their legal duties and to aid in evaluating teaching practices and curriculum in light of the immaturity of the student and the importance of the teacher's trust.

Under the American system of jurisprudence, each person has the right to be free from intentional or careless acts that may cause injury to this person or property. A physical education teacher must be aware of his potential tort liability, for if he is negligent in his conduct, in the performance of his duties, he will be legally responsible for injury that occurs. Damages assessed against him may require satisfaction from his personal funds. In Iowa, immunity is afforded the school district by reason of the common law, which results in placing full responsibility on the physical educator for his acts.

Compounding the exposure of the physical education teacher is the content of the physical education curriculum. Although the liability of the teacher is no greater than that of any other person, the incidence of injury can be safely assumed to be higher because of the active nature of the

curriculum, resulting in the greater likelihood of legal action against the teacher. The physical educator must appreciate the nature of his responsibilities and maintain constant care to avoid injury to his students in the discharge of his teaching duties.

The general law of negligence controls the decisions of teacher-student situations, and the reasonableness of the teacher's conduct will be determined by laymen and not his professional peers. The tests applied to legally determine the trained conclusions of the teacher's conduct may ignore what is professionally acceptable, therefore, constant consideration must be given to duties and responsibilities in light of individual circumstances. Each element of the physical education curriculum requires analysis of the pupils involved, giving attention to age, experience, and physical and mental capabilities. Subordinates of a program, including equipment and play area also prescribe the standards to apply to each teaching situation to avoid the possibility of injury to students. It is essential that every teacher understand the potential of his tort liability as established by the law in the jurisdiction in which he may teach.

School districts in Iowa are afforded immunity from tort liability. This extension of the doctrine of "sovereign immunity" inures only to the benefit of the school district itself, and, in effect, exposes the individual teacher to full and sole responsibility for his acts of negligence.

Physical education teachers cannot rely on the immunity of the school district to protect them or indemnify them for damages that may be assessed for negligent conduct even though the negligence may arise out of the discharge of their official duties.

Several states have abolished the rule of immunity citing reasons of social justice and the paramount right of the individual to be compensated for a wrong committed upon him. Other states provide insurance or have adopted "save harmless" statutes to protect teachers from claims arising out of negligence committed within the scope of employment.

Immunity from tort liability presently enjoyed by school districts in Iowa and by school districts in many other states is the subject of constant attack. Abrogation of the rule has been effected in several states either by judicial decision or statutory change. Although the Iowa Supreme Court has refused to change the rule of immunity, it is a reasonable assumption that legislative change may occur in the future. Abolishment of school district immunity would be of definite benefit to the individual physical education teacher. Until that time, each physical educator in Iowa must take cognizance of his individual responsibilities and exposure to personal liability for his negligent acts.

## BIBLIOGRAPHY

## BIBLIOGRAPHY

### A. BOOKS

American Jurisprudence, Vol. 38, San Francisco: Bancroft-Whitney Company, 1941.

Black, Henry Campbell. Black's Law Dictionary. St. Paul: West Publishing Company, 1951.

Edwards, Newton. The Courts and The Public Schools. Chicago: The University of Chicago Press, 1955.

Flowers, Anne, and Edward C. Bolmeier. Law and Pupil Control. Cincinnati, Ohio: The W. H. Anderson Company, 1964.

Garber, Lee O. Current Legal Concepts in Education. Philadelphia: Pennsylvania Press, 1966.

Garber, Lee O. Law and The School Business Manager. Danville: Interstate Printers and Publishers, 1957.

Gauerke, Warren. School Law. New York: The Center for Applied Research in Education, Inc., 1965.

Hamilton, R. R. Legal Rights and Liabilities of Teachers. Laramie: University of Wyoming Press, 1956.

Harper, Fowler. Harper on Torts. Indianapolis: Bobbs-Merrill Company, 1933.

Iowa Code, Des Moines: State Printing Office, 1965.

Laughery, Sister M. Bernard Francis. Parental Rights in American Educational Law. Washington: Catholic University of American Press, 1952.

Leibee, Howard C. Tort Liability For Injuries to Pupils. Ann Arbor: Campus Publishers, 1965.

National Reporter System. St. Paul: West Publishing Company, 1964.

Nolte, M. Chester, and John Phillip Linn. School Law For Teachers. Danville: The Interstate Printers and Publishers, Inc., 1964.



Remmlein, M. K. School Law. New York: McGraw-Hill, 1962.

Remmlein, M. K. School Law. New York: McGraw-Hill, 1950.

Remmlein, M. K., and Martha L. Ware. An Evaluation of Existing Forms of School Laws. Cincinnati: W. H. Anderson Company, 1959.

Rosenfield, Harry. Liability For School Accidents. New York: Harper and Brothers Publishers, 1940.

Thorndike and Barnhart. Comprehensive Desk Dictionary. New York: Doubleday and Company, 1962.

West's Key Number Digests. St. Paul: West Publishing Company, 1964.

#### B. PUBLICATIONS OF THE GOVERNMENT, LEARNED SOCIETIES, AND OTHER ORGANIZATIONS

National Education Association Research Division. The Pupils Day in Court: Review of 1965. Research Report, School Law Series, 1966-R.8. Washington, D.C.: 1966.

National Education Association Research Division. Who Is Liable For Pupil Injury. Study on Subject of Liability for Pupil Injuries. National Commission on Safety Education. Washington, D.C.: 1963.

National Education Association Research Division. The Teacher's Day in Court: Review of 1965. Research Report, School Law Series, 1966-R.8. Washington, D.C.: 1966.

#### C. PERIODICALS

Dissinger, Jean K. "Accidents in Junior High School Physical Education Programs," The Research Quarterly, XXXVII (December, 1966), 495-505.

Gold, Sondra V., and Gerald F. Gold. "First Aid and Legal Liability," Journal of Health-Physical Education-Recreation, XXXIV (January, 1963), 42-44.

Hard, J. Robert. "Liability of Public Bodies, Officers, and Employees,--Governmental Immunity," Drake Law Review, XI (May, 1962), 79-107.

Kurtzman, Joseph. "Legal Liability and Physical Education," The Physical Educator, XXIV (March, 1967), 20-22.

Muniz, Arthur J. "The Teacher Pupil Injury and Legal Liability," Journal of Health-Physical Education-Recreation, XXXIII (September, 1962), 28.

Sackett, George. "Tort Liability of a County, County Official, or County Employee in Iowa," Drake Law Review, IX (December, 1959), 41-47.

Sease, Edmund. "Iowa Municipal Tort Immunity," Drake Law Review, XVI (December, 1966), 35-39.

#### D. NEWSPAPER ARTICLE

Mills, George. "I.S.U. Student Gets \$214 For Basketball Injuries," Des Moines Register, April 3, 1967, p. 13.

## APPENDIX

LIST OF CASES RELATING TO THE LEGAL LIABILITY OF  
PHYSICAL EDUCATION TEACHERS IN IOWA

I. INTRODUCTION

Aitchison v. Reter, 245 Iowa 1005, 64 N.W. 2d 923 (1954).

Banning v. Chicago R.I. & P. Ry. 89 Iowa 74, 56 N.W. 277  
(1893).

Boyer v. Iowa High School Athletic Association and Independent  
School District of Mason City, Iowa, 256 Iowa 337, 127  
N.W. 2d 606 (1964).

Chenoweth v. Flynn, 251 Iowa 11, 99 N.W. 2d 310 (1959).

Cowman v. Hansen, 250 Iowa 358, 92 N.W.2d 682 (1958).

Crowley v. Chicago B. & Q. Ry. Co., 204 Iowa 1385, 213 N.W.  
403 (1928).

Cunningham v. Adair County, 190 Iowa 913, 181 N.W. 2d (1921).

Doggett v. Chicago B. & Q. Ry. Co., 134 Iowa 690, 112 N.W.  
171 (1907).

Doyle v. Chicago St. P. & K.C.R. Co., 77 Iowa 607, 42 N.W.  
555 (1889).

Edwards v. Kirk, 227 Iowa 684, 288 N.W. 875 (1939).

Goold v. Saunders, 196 Iowa 380, 194 N.W. 227 (1923).

Gray v. Des Moines, 221 Iowa 596, 265 N.W. 612 (1936).

Haynes v. Presbyterian Hospital Association, 241 Iowa 1269,  
45 N.W. 2d 151 (1954).

Heacock v. Baule, 216 Iowa 311, 249 N.W. 437 (1933).

Hodges v. U.S., 98 F. Supp. 281 S.D. Iowa (1948).

Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W. 2d 618  
(1962).

Hoover v. Iowa State Highway Commission, 207 Iowa 56, 58, 222  
N.W. 438, 439 (1928).

Johnston v. Johnson, 225 Iowa 77, 279 N.W. 139 (1938).

Larsen v. Independent School District, 223 Iowa 691, 272 N.W. 632 (1937).

Law v. Hammingsen, 249 Iowa 820, 89 N.W. 2d 386 (1958).

Mardis v. City of Des Moines, 240 Iowa 105, 113, 34 N.W.2d 620 (1949).

Marean v. Peterson, Iowa, 144 N.W. 2d 906 (1966).

Miller v. Town of Milford, 224 Iowa 753, 276 N.W. 826 (1938).

Molitor v. Kaneland Community Unit District No. 302, 18 Ill. 2d 11, 163 N.E. 2d 89 (1960).

Montanick v. McMillin, 225 Iowa 442, 280 N.W. 608 (1938).

McDonald v. Chicago & N.W.R. Co., 26 Iowa 124, 96 Am. Dec. 114 (1868).

McEldon v. Drew, 138 Iowa 390, 116 N.W. 147 (1908).

Ness v. Independent School District, 230 Iowa 771, 298 N.W. 85 (1941).

Rowley v. Cedar Rapids, 203 Iowa 1245, 212 N.W. 158 (1927).

Sawaya v. Tucson High School District, 78 Ariz. 389, 281 P.2d 105 (1955).

Schevers v. American R. Express Co., 195 Iowa 423, 192 N.W. 255 (1923).

Schultz v. Gosselink, Iowa, 148 N.W. 2d 434 (1967).

Spanel v. Mounds View School District, 264 Minn. 279, 118 N.W.2d 895 (1962).

Thyssen v. Davenport Ice and Cold Storage Company, 134 Iowa 749, 112 N.W. 177 (1907).

Wagaman v. Ryan, Iowa, 142 N.W.2d 413 (1966).

Walrod v. Webster County, 110 Iowa 349, 81 N.W. 598 (1900).

## II. LIABILITY IN THE SELECTED AREA OF PHYSICAL EDUCATION

Bellman v. San Francisco High School District, 11 Cal. 2d 576, 81 P.2d 274 (1938).

Bodaken v. Logan, 254 Iowa 230, 117 N.W.2d 470 (1962).

Briscoe v. School District No. 123 Grays Harbor County, 201 P.2d 697 (1949).

Britton v. State, 103 N.Y.S.2d, 485 N.Y. (1951).

Carey v. Davis, 190 Iowa 720, 180 N.W. 889.

Combareri v. Board of Education, N.Y.C., 215 App. Div. 695, 212 N.Y. Supp. 424 (1965).

Cianci v. Board of Education, 238 N.Y.S.2d 547 N.Y.S. (1963).

Dawson v. Tulare High School District, 98 Cal. App.2d 246, 82 P2d 197 (1928).

Domino v. Mercurio, 234 N.Y.S.2d 1041 (1962).

Eastman v. Williams, 207 A.2d 146, Vt. Sup. Ct. (1965).

Fein v. Board of Education, 1951 Supp., 104 N.Y.S.2d 996 (1951).

Fessenden v. Smith, 124 N.W.2d 554, Iowa 255 Iowa 1170 (1963).

Freund v. Oakland Board of Education, 28 Cal. App. 2d 246, 82P2d 197 (1938).

Fruitt v. Gaines, 317 F.2d 461 Delaware (1963).

Gardner v. State of New York, 256 App. Div. 385, 10 N.Y. Supp. 2d 274 (1941).

Hanson v. Reedly School District, 43 Cal. App.2d 643, 111p2d 415 (1941).

Katterschinsky v. Board of Education, N.Y.C., 215 App. Div. 695, 212 N.Y. Supp. 424 (1925).

Kitzel v. Atkeson, 245P2d 170 Kansas (1952).

Klein v. Hoffman, 15 App. Div. 2d 899 N.Y. (1961).

Larsen v. Independent School District, 223 Iowa 691, 272 N.W. 632 (1937).

LaValley v. Stanford, 272 App. Div. 183, 70 N.T.S.2d 460 (1947).

Longo v. Board of Education, 235 App. Div. 733, 255 N.Y. Supp. 719 (1932).

Mokovich v. Independent School District, 177 Minn. 445, 225, N.W. 292 (1929).

Morris v. Douglas County School District No. 2, 403 P2d 775 (1965).

Nester v. City of New York, 211 N.Y.S.2d 547 N.T.S. (1961).

Ogando v. Carquinez School District, 24 Cal. App. 2d 567, 75 P2d 641 (1938).

Renrich v. City of Newark, 181 A.2d 25 N.J. (1962).

Rodrequez v. Seattle School District No. 1, 402 P2d 326 (1965).

Specer v. School District, 121 Oregon 511, 254 P 357 (1927).

Tinkham v. Kale, 452 Iowa 1303, 110 N.W.2d 258 (1961).

Welch v. Dunsmuir Joint Union High School District, 326 P2d 633 Cal. (1958).

Wihtol v. Crow, D.C., Iowa, 199 F. Supp. 682 (1961).

Wire v. Williams, Minn., 133 N.W.2d 840 (1965).